

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

All Metal Sales, Inc.,	)	Case No. 1:10-cv-02343
	)	
Plaintiff,	)	Judge Donald C. Nugent
	)	
vs.	)	
	)	<u>Stipulations of Fact</u>
All Metal Source, LLC,	)	
	)	
Defendant.	)	

In accordance with the Court's Trial Order (Dkt. No. 41), plaintiff All Metal Sales, Inc. ("All Metal") and All Metal Source, LLC, n/k/a A Metal Source, LLC, ("A Metal") hereby stipulate to the following facts:

1. All Metal has used the ALL METAL and A Logo marks since 1999.
2. Since 1999, All Metal has spent over \$580,000 to promote and advertise the sale of its products.
3. Since 1999, All Metal has grossed over \$38 million in sales of products.
4. The A Logo mark is inherently distinctive.
5. In reviewing All Metal's trademark application (Serial No. 85/243,378) for the A Logo mark, the United States Patent and Trademark Office ("USPTO") found that the A Logo mark is inherently distinctive and entitled to trademark protection.

6. The USPTO has approved the A Logo mark for publication in the *Official Gazette* on December 27, 2011. If no opposition is filed, the USPTO will issue a certificate of registration for the A Logo mark to All Metal.

7. The ALL METAL mark is not “generic.”

8. On February 12, 2003, Jessica Esparza registered a business called “Monarch-E-Metals” with the Ohio Secretary of State. The registration was cancelled by the Secretary of State’s office on December 15, 2003.

9. On May 5, 2003, Jessica Esparza registered a business called “Unlimited Metals, Incorporated” with the Ohio Secretary of State. The registration was cancelled by the Ohio Department of Taxation on July 26, 2007.

10. Ms. Esparza set up Monarch-E-Metals and Unlimited Metals to sell metal products in competition with All Metal.

11. A Metal used the “All Metal” name between November 9, 2009, and October 19, 2010.

12. A Metal changed its name to A Metal on October 19, 2010, and continues to use that name.

13. All Metal and A Metal are both headquartered in Westlake, Ohio.

14. All Metal and A Metal sell identical goods.

15. A Metal registered the domain name [allmetalsource.com](http://allmetalsource.com) on October 6, 2009, which it uses to promote its business.

16. A Metal registered the domain name [ametalsource.com](http://ametalsource.com) on October 6, 2010, which it uses to promote its business.

17. Since A Metal first began using the “All Metal” name on November 9, 2009, through October 17, 2011, it has grossed a total of \$143,991 in revenue from sales of metal product. All Metal grossed \$56,109 of that total while using the “All Metal” name, and it grossed \$87,882 while using the “A Metal” name.

Dated: December 27, 2011

Respectfully submitted,

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Certificate Of Service

I hereby certify that on December 27, 2011, a copy of the foregoing Stipulations of Fact was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt, and parties may access this filing through the Court's system.

s/ Matthew J. Cavanagh  
*Counsel for All Metal Sales, Inc.*